Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request to Update Default Compensation Rate for	)	WC Docket No. 03-225
Dial Around Calls from Payphones	)	RM No. 10568

REPLY COMMENTS OF THE ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION

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The Illinois Public Telecommunications Association ("IPTA") submits these reply comments on behalf of its members in response to the Commission's Notice of Proposed Rulemaking to consider whether to prescribe a new default compensation rate for dial-around calls from payphones. In particular, the IPTA will respond to the comments of WorldCom, Inc., AT&T Corporation, Sprint Corporation, and Global Crossing North America, Inc. (collectively "IXCs") in conjunction with certain observations as to other comments. The IPTA respectfully submits that the facts establish that the per-call compensation rate needs to be increased to $0.612 per-call, or in the alternative, at least to the $0.49 per-call proposed by the RBOC Payphone Coalition and the American Public Communications Council. The IXCs' arguments in opposition are unsupported by the facts.

When the Federal Communications Commission established the existing dial-around per-call compensation rate at $0.24 per-call, the Commission elected to use a cost-based approach in determining a fair level of compensation. This approach was based upon implementing a dial-around compensation regime that would generate payments to payphone service providers ("PSPs") sufficient to cover $34.08 in monthly costs per payphone. With five years of evidence as to the effect of this dial-around compensation program, it is now clear that the $0.24 per-call rate has been wholly insufficient to satisfy the minimum objectives set by the Commission.

In setting the per-call rate, the Commission determined that a marginal payphone needed to recover sufficient revenues from dial-around call traffic to cover $34.08 in costs. See IPTA Comments, pp. 4-5. Through this recovery, the Commission found that a marginal payphone could maintain its placement and satisfy the twofold directives of Section 276 of the Telecommunications Act of 1996: (1) to ensure fair compensation for each and every completed call using a payphone; and (2) to promote the widespread deployment of payphone services to the benefit of the general public. The Commission determined that the dial-around call traffic needed to recover $34.08 per month to cover its proportionate share of monthly payphone costs. With the expectation that a marginal payphone would receive payment for 142 dial-around calls per month, the Commission established the rate at $0.24 per call to reach the $34.08 monthly level. However, after five years of implementation, the record reflects that the Commission's dial-around compensation scheme failed to attain the $34.08 compensation level even back in 1999, much less with the decreased level of dial-around call payment today.

As shown in the IPTA Comments, the actual dial-around compensation collected for a marginal payphone from 1999 to the 2002 has declined from a maximum of $20.45 per payphone per month to $13.73 per payphone per month. IPTA Comments at 8. The record further reflects that there has been a dramatic 31% decrease in the number of payphones deployed, with the rate of decline increasing rapidly each year. These reductions are attributable to the lack of sufficient revenues to maintain payphone stations. The revenue insufficiency is a combination of an increase in cellular traffic, and a substantial under-compensation of payphone service providers for the dial-around call traffic, which traffic constitutes a substantial percentage of the revenue base of these payphones. The record is clear that there is great distress in maintaining the continued deployment of payphones for the benefit of the general public. The Commission needs to act swiftly to ensure that it carries out its responsibilities under the Communications Act to ensure compensation for each and every call and the widespread deployment of payphones.

I. THE COMMISSION NEEDS TO INCREASE THE DIAL-AROUND COMPENSATION PER CALL RATE TO A FAIR LEVEL TO ENSURE THE WIDESPREAD DEPLOYMENT OF PAYPHONES.

Despite the dramatic decrease in the number payphone stations throughout the country, the IXCs purport that the Commission needs to make further determinations on the appropriate level of payphone deployment before taking any action. AT&T Comments at 4-7; WorldCom Comments at 6-8; Sprint Comments at 8. The IXCs argue that there is a significantly different market today and therefore there is no evidence of the number of payphones necessary for the public demand. The IXCs ignore the facts.

The Commission found that the level of deployment of payphones in 1999 was the appropriate level to meet the public demand. Since that time, although there has been a significant increase in the number of wireless phones, there has been a similarly dramatic decrease in the number of payphones. The RBOCs note a decrease of 40% in their payphone deployment (RBOC Coalition Comments at 4) and APCC notes a national average decrease of 31% through March, 2003 (APCC Comments at 7). This is even before taking into consideration the BellSouth payphones that have recently exited the market. As noted by the APCC, 50% of the country remains without wireless telephones. APCC Comments at 3. Those most in need of inexpensive access to the public telephone network remain dependent on payphones for that access. Those least likely to purchase cellular service are those most in need of payphone deployment. Those without residential phone service, the poor, minorities, social service recipients, victims of domestic violence and child abuse rely upon public access for their communications. Victims of crime, those in need of emergency assistance or in sudden disasters, such as, floods, hurricanes or electrical blackouts, need public access to communications. Payphones are not subject to placement and displacement on an occasional basis. They are permanent installations that need certain minimal revenues to cover the basic costs for maintaining their deployment. As shown in the Comments of the RBOC Coalition and APCC, these costs have changed very little over the years. However, it is indisputable that the traffic responsible for the revenues to cover these costs has diminished precipitously.

The decrease in call traffic necessarily results in increases in the cost burden per call. AT&T purports that there is no reason to expect that the vast majority of payphones currently deployed are unprofitable. AT&T Comments, Attachment A, Declaration of Hans Heymann, p.4. The clear evidence rebuts this rhetoric. The Commission's own findings recognized that dial-around call traffic need to recover $34.08 per payphone per month simply to sustain a marginal payphone location. See IPTA Comments at 4-5. Yet, as of 2002 the per-call compensation scheme is generating only $13.73 per payphone per month. This is a shortfall of $20.35 per payphone per month.

As noted by the IPTA in its opening comments, the three largest independent payphone service providers in Illinois have all exited the market since the Commission's 1999 order. On a national basis, two of the nation's largest independent payphone providers have declared bankruptcy. The record further reflects that one of the three remaining RBOCs, BellSouth, has found the provisioning of payphone services so unprofitable as to totally leave the marketplace.

When the Commission initially set the rate of per-call compensation, the RBOCs and other payphone service providers submitted that the level of compensation was too low to sustain payphone deployment. This would ultimately result in the PSPs exiting the market completely. At that time, the IXCs claim these were empty threats. Now that this unfortunate consequence has come to fact, the IXCs continue to urge the Commission to pay no attention to the facts. The IXCs empty rhetoric is unsustainable given the facts.

II. THE EVIDENCE OF RECORD SUPPORTS AN INCREASE IN THE PER CALL COMPENSATION RATE TO $0.612 PER CALL.

The IPTA Comments established that a per-call rate of $0.612 per call would be necessary for a marginal payphone to actually recover the $34.08 in payphone costs identified by the Commission in the *Third Report and Order* [1], plus the $0.016 per call in additional collection costs and interests identified by the APCC. Alternatively the RBOC Coalition and APCC surveys reflect a rate of $0.49 per call is needed. However, AT&T, WorldCom, and Sprint all criticize the surveys submitted by the RBOC Coalition and APCC. The IXCs submit various speculations as to theoretical flaws that could have affected the determination of the average number of calls per payphone. They ignore that two independent surveys by the largest groups of payphone service providers in the country reached a similar determination as to the increase level in the per-call compensation rate needed to cover costs. The IXCs speculate that the surveys may have included call volume data from locations that do not fully recover their costs. It is argued that this could artificially lower the average number of calls per payphone station, thus increasing the rate per-call. The IPTA submits that not only do the two independent surveys

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Third Report and Order, Released May 5, 1999, *("Third Report and Order").*

corroborate each another, but a review of the actual dial-around per-call compensation evidence for the past five years independently corroborates and sustains these findings.

The data submitted by the IPTA in its initial comments included between 25,000 and 21,000 payphones, constituting entire base of payphones submitted to an aggregator for dial-around compensation over a five year period. In opposition to the AT&T criticisms of the APCC survey that it may be subject to biases due to the amount of nonresponses or due to the survey subjects having a direct interest in the outcome, the five years of records of actual compensation payments reflect only the earnest effort to get paid the full amount due. The actual compensation payment records confirm that as of 2002 a marginal payphone received an average payment of 57.2 calls per month IPTA Comments at 8. As such, it would be necessary to have an effective per call rate of $0.596 to have reached the Commission's target of $34.08 per month. With the addition of collection costs and additional interest, the per-call rate would need to be $0.612. WorldCom argued that, contrary to the Commission's position to utilize a marginal payphone, the call volume from an average payphone should be utilized. WorldCom Comments at 17. However, even utilizing the number of calls from an average payphone, in 2002 there were only 67.4 paid calls per payphone, which would necessitate a rate of $0.506 per call to reach the Commission target of $34.08 per month. To recover the collection cost and additional interest, the per-call rate for an average payphone would need to be $0.522. Five years of actual data corroborate the increase found through both the RBOC Coalition and the APCC surveys, and, in fact, support a higher per-call rate of compensation.

Certain IXCs argue that there should no input for bad debt, or uncollectibles, in the Commission's consideration. As such, they object to using the facts of actual compensation payments. They purport that the Commission has rejected inclusion of this input and was affirmed as to its inappropriateness by the U.S. Court of Appeals. AT&T Comments at 16, 20-22; WorldCom Comments at 15-16; Sprint Comments at 13. Neither position is accurate. The Commission determined in 1999 that it had insufficient evidence as to the level of bad debt that the PSPs may incur or as to its future level. On appeal, the Court acknowledged that the Commission found it would be unwise to establish a cost element from bad debt due to insufficient information at that time. *American Public Communications Council v. Federal Communications Commission*, 215 F.3d 51, 55-56 (D.C. Cir. 2000). The Court concluded "that is was prudent and reasonable for the Commission to decide that, on balance, the existing bad debt data was not reliable enough to warrant any educated guess as to future bad debt percentages." The Court specifically noted that the PSPs had a remedy, i.e. to request the Commission to determine this issue which was still pending before it. *APCC*, *supra*, 215 F.3d at 57. As directed by the Court, the PSPs have squarely placed this matter before the Commission.

The PSPs have submitted five years of data reflecting the actual collection rate of dial-around compensation over this time span. In 1999, the Commission was concerned that it had insufficient information as to the levels of actual compensation collection. The data submitted by the IPTA not only covers a five year period, but further shows an unbroken and steady trend as to the number of actual calls for which compensation has been paid per payphone per month. The average payphone has maintained a steady and continuous decrease every year, from 113.8 paid calls per line in 1998 through 67.4 paid calls per line in 2002. IPTA Comments at 7. A comparable marginal payphone station would have shown 96.6 paid calls per line in 1998 declining steadily to 57.2 paid calls per line in 2002. IPTA Comments at 8. This is merely a fraction of the 142 dial-around calls per month upon which the Commission based the $0.24 per-call rate. [2]

An additional consideration in the Commission's 1999 decision was concern over the possibility of uncollected per call compensation due to PSP billing errors. However, little room exists for such speculation. The data submitted by the IPTA comes from Data Net Systems, L.L.C., one of the nation's oldest aggregators of per-call dial-around compensation billing and collection, having begun service in 1995, predating even this Commission's per-call decisions. Data Net Systems was one of the founders establishing the industry-wide billing and collection process set up following the Commission's dial-around compensation order, and was at one time the largest aggregator of IPP payphones, submitting in excess of 400,000 lines a quarter. As a PSP aggregator, Data Net System's main duties consist in the collection in the PSP's payphone lines and submission to the responsible carriers. The detailed actual tracking and calculation of the compensable calls responsibility remains with the interexchange carriers, pursuant to the Commission's orders. Data Net Systems has further aggressively pursued any and all efforts to maintain the maximum collection possible of the compensation owed, as reflected by its being a co-plaintiff in the over 70 APCC Services cases for collection before the Federal Courts and this Commission, as listed in the APCC Comments. APCC Comments at 22-23, and Attachment 1. With eight years of experience and extensive expertise in the collection of dial-around compensation, there is no evidence of any significant PSP billing errors in its data.

The remaining question raised by the Commission was concern over a PSP's subsequent recovery of an uncollectible from a delinquent carrier, possibly resulting in double recovery. However, as above noted, Data Net Systems has aggressively pursued collection actions against

[2] *Third Report and Order,* para. 151, 152.

delinquent carriers. All recoveries from these actions have been included in the data submitted in the IPTA's opening comments. No double recovery of uncollectibles is at issue.

This five year history not only addresses the concerns expressed by the Commission in 1999 regarding uncollectibles, but identifies clear evidence of under compensation for dial-around calls, and the steady, continuous trend of reduced call traffic. This hard evidence fully corroborates the data submitted by the RBOC Coalition and the APCC and confirms the need for the Commission to raise the level of per call compensation to ensure that the payphone service providers are fairly compensated for each and every call and to promote the widespread deployment of payphone services.

III. A FAIR COMPENSATION RATE WILL NOT SUPPRESS PAYPHONE TRAFFIC.

In a final attempt to avoid a fair level of compensation for dial-around calls, the IXCs speculate that increasing the rate of per call compensation to a responsible level could result in actually suppressing the number of calls through the payphone. The interexchange carriers claim that the end users' and 1-800 subscribers' price sensitivity will cause them to either avoid payphone usage or to block calls from payphones as a result of a price increase.[3] As such, they claim that any effort by the Commission to raise the per-call compensation rate to a level that will fully compensate payphone service providers will have the unintended effect of further reducing the number of calls through the payphone. The IPTA submits the evidence does not support this speculation.

[3] WorldCom's comparison of wireless call rates and dial-around compensation rates is misplaced. WorldCom Comment at 6-10. Furthermore, WorldCom mistakenly compares the wireless per minute rate with the dial-around per call rate.

First, the IPTA notes that the Commission has never tied the dial-around per-call compensation rate to a payphone surcharge charged by the IXCs to their end users. In fact, there has been no co-relation between the per call rate and the carrier's end user payphone surcharge. While the Commission has set a level of $0.24 per call, interexchange carriers have imposed end user payphone surcharges of $0.40, $0.50, $1.00 or more. Not only are interexchange carriers not required to pass on the dial-around per call compensation charge, but they are not restricted in limiting end user payphone surcharges to that amount. The carriers remain free to charge end user as they elect and their payphone surcharges are not tied to the Commission ordered per call compensation rate. WorldCom indicates that it and AT&T are already charging payphone surcharges of $0.43 and $0.47 per dial-around call. WorldCom Comments at 18. WorldCom further states that prepaid card providers typically charge end users $0.50 payphone surcharge today. [4] WorldCom Comments at 10-11. Since end user payphone surcharges are not tied to the Commission's dial-around per-call compensation rate, carriers have repeatedly charged end user payphone surcharges well in excess of the dial-around compensation rate. There is no co-relation between the Commission establishing a fair compensation rate for the payphone service provider and the rates charged by the carriers to the end users or 1-800 subscribers.

Secondly, an historical review of changes in the compensation rate does not reflect a corresponding response in the level of payphone traffic. Global Crossing refers to the decline in call traffic since 1999 and summarily concludes that it is a result of the Commission's per-call rate. Global Crossing at 3-5. Yet Global Crossing's reference fails to support its argument that

[4] WorldCom indicates that of this $0.50 end user payphone surcharge, the prepaid card provider gives his sales merchant half of the usage charges and of the payphone surcharge. These prepaid card providers, which make their business off of the calls through PSPs' payphones, pay the card sales merchant more for the payphone surcharge alone than they pay the payphone provider that incurs all the labor and capital costs of making the call possible.

an increase in the per-call rate suppresses call traffic. The Commission's 1999 order reduced the per-call rate, not increased it. Global Crossing's analysis is inapposite.

In the Commission's *Report and Order,*[5] released September 20, 1996, the Commission initially established a flat rate of $45.85 per payphone per month on the expectation of 131 dial-around calls at $0.35 per call. *Report and Order,* para.125. In the Commission's *Second Report and Order*, [6]released October 9, 1997, the Commission reduced the rate of per call compensation to $0.284 per call. *Second Report and Order,* at para. 63. In the *Third Report and Order*, released May 5, 1999, the Commission further reduced the level of value on compensation to recover $34.08 per payphone per month, or a per call rate of $0.24. *Third Report and Order,* para. 151, 152. Despite the Commission's history of continually dropping the amount of compensation paid PSPs for dial-around calls, there has been no corresponding impact in the average number of dial-around calls paid per line.

AT&T states that its calling card rates have gone from an average of $0.65 per minute to $0.92 per minute. AT&T Comments at 9. For an average four minute call then, AT&T has gone from charging an end user $2.60 to $3.68. The most labor and capital expensive part of the call resides in the provision of the payphone service. Yet AT&T charges $3.68 for this call, while claiming it can only compensate the payphone provider $0.24. This is absurd. AT&T's Comments confirm those made by the San Diego Payphone Owners Association of charges from a variety of carriers, with rates from $6.18 for a one minute AT&T call, to $11.52 for a seven minute call on Legacy LD. San Diego Payphone Owners Association Comments at 3.

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[5] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Report and Order, Released September 20, 1996 *("Report and Order").*

[6] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Second Report and Order, Released October 9, 1997, *(Second Report and Order").*

Interexchange carriers claim that while charging these rates they cannot compensate more than $0.24 to the payphone service provider, that makes possible the end user's access and the interexchange carrier's sale. This illustrates the absurdity of the interexchange carriers' positions. Their entire argument is based upon the premise that they are entitled to the use of payphone services without expense, despite the fact that they are wholly dependent upon the PSPs' provision of payphone services for the sale of their products and for the end users' access to the public network.

It is not possible to find an MCI 1-800-COLLECT, or an AT&T 1-800 CALLATT, commercial without the brazen display of a payphone unit. These carriers are wholly dependent upon the payphone service providers widespread deployment of payphones for their services, for which they charge end users many dollars per call. Yet, they attempt to persuade this Commission that the most expensive component of that call, the provision of payphone service, should be denied compensation for providing access to the end user and the interexchange carriers. The Commission cannot countenance such irresponsibility. The payphone service providers are restricted in what they are permitted to do in providing access to calls from their payphone stations. The interexchange carriers collectively own but a minuscule fraction of the payphones deployed throughout the country. [7] Yet, despite the IXCs' total failure to invest in the deployment of the payphone stations upon which they are dependent, WorldCom, AT&T, and Sprint are responsible for the overwhelming majority of dial-around calls, upon which they are wholly dependent on the PSPs' payphones to make available. [8] Their 1-800 COLLECT, 1-800

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[7] Sprint indicates that it has deployed tens of thousands of payphone stations. Sprint Comments at 1. AT&T makes reference to having 12,000 payphone stations. AT&T Comment s at 20. Even assuming that Sprint owned all of the non-RBOC LEC payphones, and adding the 12,000 AT&T payphones, their combined total of 87,885 payphones would represent less than 6% of the 1,495,786 payphones in the country as of March 31, 2003. See FCC Trends 2003 Report, Table 7.5.

[8] AT&T and WorldCom alone constitute 65% of the dial-around traffic. WorldCom Comments at 18.

CALLATT, prepaid card and other dial-around traffic are wholly dependent upon the payphones, yet they wish to incur virtually no investment or effort making payphone services possible. The market principles that the Commission espouses dictate that the IXCs are free to establish their own payphone locations for their dial-around services should they truly believe the per-call rate exceeds the payphone costs. The Commission has removed any entry barriers. Instead, the IXCs seek for this Commission to permit them to use the phones without fair compensation, in violation of Section 276 of the Telecommunications Act of 1996. They are like someone who wishes to get in the rent-a-car business. However, instead of investing in the purchase of the cars, they prefer to stand on the street corner and just sell the keys to the cars. Then they object when Hertz wants compensation for use of the vehicles. This is something neither the law nor this Commission can countenance.

CONCLUSION

The Illinois Public Telecommunications Association respectfully submits that five years of hard data, combined with the extensive surveys of the RBOC Payphone Coalition and the APCC, representing over 80% of the payphones throughout the country, conclusively establish the need to increase the dial-around compensation per call rate. The IPTA respectfully submits that the best evidence is the actual five year history of dial-around compensation payments under the FCC’s current system. Based upon this data, the dial-around compensation per call rate for a marginal payphone should be established at between $0.596 to $0.612 per call. In the alternative, the Commission should at least increase the per call compensation rate to $0.49 per call as indicated in the RBOC Payphone Coalition Comments.

Dated: January 22, 2004

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